

Instructions for Form 6406

(Revised September 2001)

Short Form Application for Determination for Minor Amendment of Employee Benefit Plan

(Section references are to the Internal Revenue Code unless otherwise noted.)



Department of the Treasury
Internal Revenue Service

Public Inspection. Form 6406 is open to public inspection if there are more than 25 plan participants. The total number of participants must be shown on line 4e. See the instructions for line 4e for a definition of participant.

Disclosure Request by Taxpayer. The Tax Reform Act of 1976 permits a taxpayer to request the IRS to disclose and discuss the taxpayer's return and/or return information with any person(s) the taxpayer designates in a written request. Use **Form 2848**, Power of Attorney and Declaration of Representative, for this purpose.

A Change To Note

The form and instructions have undergone revisions in the format and information required. Review these documents before completing the application.

How To Get Forms and Publications

By personal computer. You can access the IRS Web Site 24 hours a day, 7 days a week at **www.irs.gov** to:

- Download forms, instructions, and publications.
- See answers to frequently asked tax questions.
- Search publications on-line by topic or keyword.
- Send us comments or request help by e-mail.
- Sign up to receive local and national tax news by e-mail.

You can also reach us using file transfer protocol at **ftp.irs.gov**.

CD-ROM. Order **Pub. 1796**, Federal Tax Products on CD-ROM, and get:

- Current year forms, instructions, and publications.
- Prior year forms, instructions, and publications.
- Popular tax forms that may be filled in electronically, printed out for submission, and saved for recordkeeping.

- The Internal Revenue Bulletin.

Buy the CD-ROM on the Internet at **www.irs.gov/cdorders** from the National Technical Information Service (NTIS) for \$21 (plus a \$5 handling fee).

By phone and in person. You can order forms and publications 24 hours a day, 7 days a week, by calling **1-800-TAX-FORM** (1-800-829-3676). You can also get most forms and publications at your local IRS office.

For questions regarding this form, call the Employee Plans Customer Service, toll-free, at 1-877-829-5500 between 8:00 a.m. and 9:30 p.m. eastern time.

General Instructions

Purpose of Form

File Form 6406 to apply for a determination for a minor amendment of a plan that has already received a favorable determination letter. However, file Form 5300 instead of Form 6406 if the plan is filing to comply with GUST (i.e., the Small Business Job Protection Act of 1996 and other laws).

A minor amendment does not include an amendment that involves a significant change to plan benefits or coverage or that may affect other portions of the plan so as to cause disqualification. For example, an amendment to add an ESOP or cash or deferred arrangement to a plan is not a minor amendment.

Use **Form 5310**, Application for Determination for Terminating Plan, instead of Form 6406 to ask for approval of an amendment that results in a plan termination.

File **Form 5310-A**, Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business, to report a:

- Merger,
- Consolidation, or
- Transfer of plan assets or liabilities to another plan.

Use **Form 5300**, Application for Determination for Employee Benefit Plan or **Form 5307**, Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans, instead of Form 6406 to ask for approval of an amendment for:

- A plan restatement. A plan is required to be restated if four or more amendments have been made to the plan. For restatement purposes, an amendment that makes only nonsubstantive plan changes is not counted as a plan amendment.
- An amendment to comply with GUST as provided in section 3.05 of Rev. Proc. 2000-27, 2000-26, I.R.B. 1272.

Type of Plan

- A **Defined Contribution Plan** (DCP) is a plan that provides an individual account for each participant and for benefits based only:

1. On the amount contributed to the participant's account, and

2. Any income, expenses, gains and losses, and any forfeitures of accounts of other participants that may be allocated to the participant's account.

- A **Defined Benefit Plan** (DBP) is any plan that is not a DCP.

Note: A qualified plan must satisfy section 401(a) including, but not limited to, participation, vesting, nondiscriminatory contributions or benefits, distributions, and contribution and benefit limitations.

Who May File

In general, file Form 6406 only if the plan has an outstanding favorable determination letter covering GUST.

This form may be filed by any:

- Employer, including a sole proprietor, partnership, plan sponsor or plan administrator to request a determination letter on the qualification of a minor amendment to their plan.
- Plan sponsor or plan administrator to request a determination letter as to

the qualification of an amendment of a plan that involves:

1. A controlled group of corporations (section 414(b)), or
2. Trades or businesses under common control (section 414(c)), or
3. An affiliated service group (section 414(m)).

This form may be filed to obtain a determination letter on:

- The qualification of minor amendments of individually designed plans (including volume submitter plans) or
- An M&P plan that is amended only through the choice of elections offered under the approved adoption agreement.

Who May Not File

A minor amendment does not include an amendment that involves a significant change to plan benefits or coverage or that may affect other portions of the plan so as to cause disqualification.

Example: An amendment to add an ESOP or cash or deferred arrangement to a plan is not a minor amendment.

This form may not be filed by anyone asking for approval of an amendment, if:

- The amendment results in a:
 1. Plan termination,
 2. Partial termination,
 3. Merger,
 4. Consolidation, or
 5. A transfer of plan assets or liabilities to another plan.
- The plan is restated. A plan is required to be restated if four or more amendments have been made to the plan. For restatement purposes, an amendment making only nonsubstantive plan changes is not counted as a plan amendment.
- You are requesting a ruling regarding leased employees. File Form 5300 instead of Form 6406.
- You are amending the plan to comply with GUST, as provided in Rev. Proc. 2000-27, Section 3.05.
- Use the appropriate Form 5300 series form, if Form 6406 may not be used.

Where To File

File Form 6406 at the address indicated below:

Internal Revenue Service,
P.O. Box 192,
Covington, KY 41012-0192.

Requests shipped by express mail or a delivery service should be sent to:

Internal Revenue Service,
201 West Rivercenter Blvd.,
Attn: Extracting Stop 312,
Covington, KY 41011.

Private Delivery Services. In addition to the United States mail, you can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. The most recent list of designated private delivery services was published by the IRS in October 2001 and includes only the following:

- Airborne Express (Airborne): Overnight Air Express Service, Next Afternoon Service, Second Day Service.
- DHL Worldwide Express (DHL): DHL "Same Day" Service, DHL USA Overnight.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

The private delivery service can tell you how to get written proof of the mailing date.

How to Complete the Application

Applications are screened for completeness. **The application must be signed by the employer, plan administrator or authorized representative.** Incomplete applications may be returned to the applicant. For this reason, it is important that an appropriate response be entered for each line item (unless instructed otherwise). In completing the application, pay careful attention to the following:

- N/A (not applicable) is accepted as a response **only** if an N/A block is provided.
- If a number is requested, a number must be entered.

- If an item provides a choice of boxes to check, check only one box unless instructed otherwise.
- If an item provides a box to check, written responses are not acceptable.
- Governmental plans and nonelecting church plans do not have to complete line 9a.
- The IRS may, at its discretion, require a plan restatement or additional information any time it is deemed necessary.

Note. *Rev. Proc. 2001-6 publishes the guidance under which the determination letter program is administered. It is updated annually and can be found in the Internal Revenue Bulletin (I.R.B.)* **Example.** *Rev. Proc. 2001-6, 2001-1 I.R.B. 194 superseded Rev. Proc. 2000-6.*

What To File

All applications must contain an **original** signature and must be accompanied by the following applicable items:

- The appropriate user fee, if applicable, and **Form 8717**, User Fee for Employee Plan Determination Letter Request. Please submit a separate check for each application. Make checks payable to the "United States Treasury."
 - A copy of the plan's latest determination letter including any addendum.
 - A copy of the new amendments or adoption agreement.
- Note.** *If a new adoption agreement is submitted, include a statement specifying which section has changed.*
- A statement as to how the amendments or changes in the adoption agreement elections affect or change the plan or any other plan maintained by the employer.

Specific Plans — Additional Requirements (See Procedural Requirements Checklist.)

- For plans of **controlled groups of corporations, trades or businesses under common control**, and **affiliated service groups** submit the statement specified in the instructions for lines 6a and 6b.
- For a **governmental or nonelecting church plan**, line 9a does not have to be completed.

Specific Instructions

Line 1a. Enter the name, address, and telephone number of the plan sponsor/employer. A plan sponsor means:

1. In the case of a plan that covers the employees of one employer, the employer;
2. In the case of a plan maintained by two or more employers (other than a plan sponsored by a group of entities required to be combined under section 414(b), (c) or (m)), the association, committee, joint board of trustees or other similar group of representatives of those who established or maintain the plan;
3. In the case of a plan sponsored by two or more entities required to be combined under sections 414(b), (c) or (m), one of the members participating in the plan; or
4. In the case of a plan that covers the employees and/or partner(s) of a partnership, the partnership.

The name of the plan sponsor/employer should be the same name that was or will be used when the Form 5500 or Form 5500-EZ is filed for the plan.

Address. Include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address and the plan has a P.O. box, show the box number instead of the street address. The address should be the address of the sponsor/employer.

Line 1b. Enter the 9-digit employer identification number (EIN) assigned to the plan sponsor/employer. This should be the same EIN that was or will be used when the Form 5500 or Form 5500-EZ is filed for the plan.

Do not use a social security number or the EIN of the trust. For a multiple-employer plan, the EIN for the application for the plan should be the same EIN that was or will be used when the Form 5500 is filed by the employer.

File **Form SS-4**, Application for Employer Identification Number, to apply for an EIN. Form SS-4 can be obtained by calling 1-800-TAX-FORM.

The plan of a group of entities required to be combined under section 414(b), (c), or (m) whose sponsor is more than one of the entities required to be combined

should only enter the EIN of one of the sponsoring members. This EIN **must** be used in all subsequent filings of determination letter requests and annual returns/reports unless there is a change of sponsor.

Line 1c. Enter the two digits representing the month the employer's tax year ends. This is the employer whose EIN was entered on line 1b.

Line 2. The contact person will receive copies of all correspondence as authorized in a power of attorney, Form 2848, or other written designation. Either complete the contact's information on this line, or check the box and attach a power of attorney or other written designation.

Line 3b. Form 6406 generally may not be used if the plan has not received a favorable determination letter that takes into account GUST.

Line 3c. Section 3001 of ERISA requires the applicant to provide evidence that each employee who qualifies as an interested party has been notified of the filing of the application. If "Yes" is checked, it means that each employee has been notified as required by Regulations section 1.7476-1 or this is a one-person plan. A copy of the notice is not required to be attached to this application. If "No" is checked or this line is blank, your application will be returned.

Rules defining "interested parties" and the form of notification are in Regulations section 1.7476-1. For an example of an acceptable format, see Rev. Proc. 2001-6, 2001-1 I.R.B. 194

Line 4b. Enter the three-digit number, beginning with "001" and continuing in numerical order for each plan you adopt. (001-499). This numbering will differentiate your plans. The number assigned to a plan must not be changed or used for any other plan. This should be the same number that was or will be used when the Form 5500 or Form 5500-EZ is filed for the plan.

Line 4c. "Plan year" means the calendar, policy, or fiscal year on which the records of the plan are kept.

Line 4e. Enter the total number of participants. A participant means:

1. The total number of employees participating in the plan including employees under a section 401(k) qualified cash or deferred arrangement who are **eligible** but do not make elective deferrals,

2. Retirees and other former employees who have a nonforfeitable right to benefits under the plan, and

3. The beneficiary of a deceased employee who is receiving or will in the future receive benefits under the plan. Include one beneficiary for each deceased employee regardless of the number of individuals receiving benefits.

Example: Payment of a deceased employee's benefit to three children is considered a payment to one beneficiary.

Line 5. Cash balance or similar plan. For this purpose, a "cash balance" formula is a benefit formula in a defined benefit plan by whatever name (e.g., personal account plan, pension equity plan, life cycle plan, cash account plan, etc.) that rather than, or in addition to, expressing the accrued benefit as a life annuity commencing at normal retirement age, defines benefits for each employee in terms more common to a defined contribution plan such as a single sum distribution amount (e.g., 10 percent of final average pay times years of service, or the amount of the employee's hypothetical account balance).

Lines 6a and 6b. If the plan employer is a member of a controlled group of corporations, trades or businesses under common control, or an affiliated service group, all employees of the group will be treated as employed by a single employer for purposes of certain qualification requirements.

Attach a statement showing in detail:

1. All members of the group;
2. Their relationship to the plan employer;
3. The type(s) of plan(s) each member has, and
4. Plans common to all members.

Line 9a. Section 411(d)(6) protected benefits include:

- The accrued benefit of a participant as of the later of the amendment's adoption date or effective date; and
- Any early retirement benefit, retirement-type subsidy or optional form of benefit for benefits from service before such amendment.

If the answer is "Yes," explain on an attachment how the amendment satisfies one of the exceptions to the prohibition on reduction or elimination of section 411(d)(6) protected benefits.

Privacy Act and Paperwork Reduction Act Notice.

We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need it to determine whether your defined benefit or defined contribution plan, as amended, qualifies for approval under section 401(a) of the Internal Revenue Code and is exempt from taxation under section 501(a) of the Code. Section 6109 of the Code requires you to provide your taxpayer identification number. Routine uses of the information provided on this form include giving it to the Department of Justice for civil and criminal litigation and to other Federal agencies, as provided by law. We may disclose the information to cities, states, the District of Columbia, and U.S. Commonwealths or possessions

to administer their tax laws. We may disclose the information to foreign governments pursuant to tax treaties. If you do not provide all of the information requested on this form, we may be unable to make a determination with respect to your amendment. If you provide false or fraudulent information, you may be subject to penalties.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping..... 14 hr., 21 min.

Learning about the law or the form..... 2 hr., 19 min.

Preparing the form 4 hr., 31 min.

Copying, assembling, and sending the form to the IRS. 32 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001.

Do not send the form to this office. Instead, see **Where To File** on page 2.